

AIR TRANSPORT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE PORTUGUESE REPUBLIC

The United States of America and the Portuguese Republic, hereinafter called
"the Contracting Parties,"

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping
public a variety of service options at the lowest prices that are not
discriminatory and do not represent abuse of a dominant position, and wishing
to encourage individual airlines to develop and implement
innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air
transport and reaffirming their grave concern about acts or threats against the
security of aircraft, which jeopardize the safety of persons or property,
adversely affect the operation of air transportation, and undermine public
confidence in the safety of civil aviation;

Being Parties to the Convention on International Civil Aviation opened for
signature at Chicago on the seventh day of December, 1944; and

Desiring to conclude a new Air Transport Agreement between the United
States of America and Portugal, in order to implement their common policy of
a market-oriented air transport system,

Have agreed as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, unless otherwise stated, the term:

1. "Aeronautical authorities" means, in the case of the United States, the *Department of Transportation, or its successor*, and in the case of the Portuguese Republic, the National Institute of Civil Aviation and any person or body authorized to perform any functions at present exercised by the National Institute of Civil Aviation;
2. "Agreement" means this Agreement, its Annexes, and any amendments thereto;
3. "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
4. "Convention" means the Convention on international Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
 - a) any amendment that has entered into force under Article 94 (a) of the Convention and has been ratified by both Parties, and
 - b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;
5. "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;
6. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;
7. "International air transportation" means air transportation that passes through the air space over the territory of more than one State;
8. "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
9. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
10. "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party and the territorial waters adjacent thereto; and

11. "User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities;

ARTICLE 2

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air transportation by the airlines of the other Contracting Party:

- a) *the right to fly across its territory without landing;*
- b) *the right to make stops in its territory for non-traffic, purposes; and*
- c) *the rights otherwise specified in this Agreement.*

2. Nothing in this Article shall be deemed to confer on the airline or airlines of one Contracting Party the rights to take on board, in the territory of the other Contracting Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

DESIGNATION AND AUTHORIZATION

1. Each Contracting Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Contracting Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or both.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, the other Contracting Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- a) *substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline, nationals of that Contracting Party, or both;*
- b) *the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Contracting Party considering the application or applications; and*

- c) the Contracting Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security).

ARTICLE 4

REVOCATION OF AUTHORIZATION

1. Each Contracting Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Contracting Party where:
 - a) substantial ownership and effective control of that airline are not vested in the other Contracting Party, the Contracting Parties' nationals, or both;
 - b) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of the Agreement; or
 - c) the other Contracting Party is not maintaining and administering the standards as set forth in Article 6 (Safety).
2. Unless immediate action is essential to prevent further non-compliance with subparagraphs 1.b) or 1.c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. Such consultations shall commence within thirty (30) days from the date the other Contracting Party receives the request therefor.
3. This Article does not limit the rights of either Contracting Party to withhold, revoke, limit or impose conditions on the operating authorization or technical permissions of an airline or airlines of the other Contracting Party in accordance with the provisions of Article 7 (Aviation Security).

ARTICLE 5

APPLICATION OF LAWS

1. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines of the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from, and while within the territory of the first Contracting Party.
2. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations, shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Contracting Party upon entrance into or departure from, and while within, the territory of the first Contracting Party.

ARTICLE 6

SAFETY

1. Each Contracting Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Contracting Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Contracting Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Contracting Party.

2. Either Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. Such consultations shall take place within thirty (30) days from the date of a request by one Contracting Party, unless both Contracting Parties otherwise agree. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 7

AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of aircraft, their passengers and crew, airports and air navigation facilities, and to address any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, or operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into, for departure from, and while within the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen (15) days.

ARTICLE 8

COMMERCIAL OPPORTUNITIES

1. The airlines of each Contracting Party shall have the right to establish offices in the territory of the other Contracting Party for the promotion and sale of air transportation, in accordance with applicable non-discriminatory procedures and administrative requirements, if any.

2. The designated airline or airlines of one Contracting Party shall have the right, in accordance with the laws and regulations relating to entry, residence, and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational, and other specialist staff who are required to support the provision of air transportation.

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3. Any airline of each Contracting Party may engage in the sale of air transportation in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that territory or in freely convertible currencies.

4. Each Contracting Party shall grant to any airline of the other Contracting Party the right to convert and remit to its country freely on demand, without restrictions or taxation in respect thereof, in any freely convertible currency, and at any legal rate of exchange applicable on the date the carrier makes the initial application for or initiates remittance, the revenue, in excess of sums locally disbursed, realized through the sale of air transportation and ancillary services.

5. The airlines of each Contracting Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency. At their discretion, the airlines of each Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies according to local currency regulation.

6. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements, with

- a) an airline or airlines of either Party;
- b) an airline or airlines of a third country, provided that such third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country; and
- c) a surface transportation provider of any country;

provided that all airlines or surface transportation providers in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

7. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Contracting Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including transport to and from all airports with appropriate inspection facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and

indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

8. Each designated airline shall have the right to perform its own ground-handling in the territory of the other Contracting Party (self-handling) or, at its option, select among competing authorized agents for such services in whole or in part. These rights shall be exercised in compliance with the laws and regulations normally applied by the Contracting Parties on a nondiscriminatory basis. The right to self handle or select among competing authorized agents shall be subject only to constraints resulting from considerations of airport safety and, for the Portuguese side, bases for exemption provided for in European Union Council Directive 96/67/EC and the Portuguese legislation implementing that Directive. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the full costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

ARTICLE 9

CUSTOMS DUTIES AND CHARGES

1. On arriving in the territory of one Contracting Party, aircraft operated in international air transportation by the designated airlines of the other Contracting Party, *their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation* shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (1) imposed by the national authorities, and (2) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- a) regular equipment and aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight) introduced into or supplied in the territory of a Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board;

b) ground equipment and spare parts (including engines) introduced into the territory of a Contracting Party for the servicing, maintenance, or repair of aircraft of an airline of the other Contracting Party used in international air transportation;

c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and

d) promotional and advertising materials introduced into or supplied in the territory of one Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the designated airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article.

ARTICLE 10

USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be

necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

ARTICLE 11

FAIR COMPETITION

1. Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to compete in providing the international air transportation governed by this Agreement.

2. Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or of the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational (including congestion) or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

3. Neither Party shall impose on the other Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

4. Neither Contracting Party shall require the filing of schedules, programs for charter flights, or operating plans by airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be authorized in an Annex to this Agreement. If a Contracting Party requires such filings for information purposes, it shall minimize the administrative burdens of the filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Contracting Party.

ARTICLE 12

PRICING

1. Each Contracting Party shall allow prices of air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of unreasonably discriminatory prices or practices;
- b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
- c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support; and
- d) protection of airlines from abuses of a dominant position resulting from prices that are unjustifiably low, taking account of the costs to the initiating airline of providing the services or facilities to which they relate, where evidence exists as to an intent to eliminate competition.

2. Each Contracting Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Contracting Party. Notification or filing by the airlines of both Contracting Parties may be required no more than thirty (30) days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Contracting Party shall require the notification or filing by airlines of the other Contracting Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by:

- a) an airline of either Contracting Party for international air transportation between the territories of the Contracting Parties, or;
- b) an airline of one Contracting Party for international air transportation between the territory of the other Contracting Party and any other country,

including in both cases transportation on an interline or intraline basis, provided that, in the case of services to or from third countries to which Council Regulation (EEC) No. 2409/92 of 23 July 1992, applies on the date that the Agreement is signed, or to which a not more restrictive successor regulation applies, such a price is not specifically prohibited under that Regulation.

4. If either Contracting Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall take appropriate action, consistent with its national law, to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

ARTICLE 13

CONSULTATIONS

Either Contracting Party may, at any time, request in writing consultations on the interpretation, application or amendment of the Agreement. Such consultations shall begin within a period of sixty (60) days from the date of the other Contracting Party receives the request. If the requesting Contracting Party considers that expedited consultations are necessary to address a matter that it considers urgent, such consultations shall begin within thirty (30) days from the date the other Contracting Party receives the request.

ARTICLE 14

SETTLEMENT OF DISPUTES

1. Any dispute arising under this Agreement, except those that may arise under paragraph 3 of Article 12 (Pricing), that is not resolved by a first round of formal consultations may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.
2. Arbitration shall be made by a tribunal of three arbitrators to be constituted as follows:
 - a) Within thirty (30) days after the receipt of a request for arbitration, each Contracting Party shall name one arbitrator. Within sixty (60) days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
 - b) If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph a) of this paragraph, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within thirty (30) days. If the President of the Council is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The tribunal, once formed, may recommend interim relief measures pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than fifteen (15) days after the tribunal is fully constituted.
4. Except as otherwise agreed or as directed by the tribunal, each Contracting Party shall submit a memorandum within forty five (45) days of

the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Contracting Party or on its own initiative within fifteen (15) days after replies are due.

5. The tribunal shall, unless otherwise agreed by the Contracting Parties, render a written decision within sixty (60) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

6. The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.

7. Each Contracting Party shall, to the degree consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2.b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 15

COMPARABLE TREATMENT

The United States shall, to the full extent permitted by U.S. law, offer Portuguese carriers the benefit of any U.S. legislation that provides carriers of other European Union member States opportunities in the areas of cabotage and foreign ownership and control of U.S. carriers. The Portuguese Republic shall, to the full extent permitted by Portuguese and European Union law, offer U.S. carriers the benefit of any Portuguese or European Union legislation that provides carriers of any other North American State opportunities in the areas of cabotage and foreign ownership and control of Portuguese carriers.

ARTICLE 16

REGISTRATION WITH ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 17

TERMINATION

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. This Agreement shall terminate at midnight at the place of receipt of the notice twelve (12) months after the date of the receipt of such notice by the other Contracting Party, unless the notice to terminate is

withdrawn by mutual agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 18

AMENDMENTS

1. The Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force on the day on which both Contracting Parties have informed each other by exchange of diplomatic notes that the necessary internal procedures have been completed. Amendments to the Annexes shall be provisionally applied by the Contracting Parties through their aeronautical authorities from the date of signature.

2. If, after entry into force of the Agreement, both Contracting Parties become party to a multilateral agreement that addresses matters covered by this Agreement, they shall consult to determine whether this Agreement should be amended to take into account the multilateral agreement.

ARTICLE 19

ENTRY INTO FORCE

The Agreement shall apply provisionally upon signature and shall enter into force on the day on which both Contracting Parties have informed each other through an exchange of diplomatic notes that the necessary internal procedures for entry into force of the Agreement have been completed. Upon entry into force the Agreement shall supersede the Agreement between the United States of America and the Portuguese Republic relating to air transport services, signed at Lisbon December 6, 1945, as amended.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by the respective Governments, have signed this Agreement.

DONE at Lisbon, on the 30th day of May, 2000, in the English and Portuguese languages, both texts being equally authentic.

FOR THE
UNITED STATES OF AMERICA:

Madeleine Albright

FOR THE
PORTUGUESE REPUBLIC:

João Gomes

ANNEX I

Scheduled Air Transportation

Section 1

Routes

Airlines of each Contracting Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

A. Routes for the airline or airlines designated by the Government of the United States:

1. From points behind the United States via the United States and intermediate points to a point or points in Portugal and beyond.
2. For all-cargo service or services, between Portugal and any point or points.

B. Routes for the airline or airlines designated by the Portuguese Republic.

1. From points behind Portugal via Portugal and intermediate points to a point or points in the United States and beyond.
2. For all-cargo service or services, between the United States and any point or points.

Section 2

Operational Flexibility

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve behind, intermediate, and beyond points and points in the territories of the Contracting Parties on the routes in any combination and in any order.
4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services, the service serves a point in the territory of the Contracting Party designating the airline.

Section 3

Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Contracting Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Contracting Party that has designated the airline is a continuation of the transportation from beyond such point.

ANNEX II

Charter Air Transportation

Section I

A. Airlines of each Contracting Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in the territory of the Contracting Party that has designated the airline and any point or points in the territory of the other Contracting Party; and
2. Between any point or points in the territory of the other Contracting Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Contracting Party.

B. In the performance of services covered by this Annex, airlines of each Contracting Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside the territory of either Contracting Party; (2) to carry transit traffic through the other Contracting Party's territory; (3) to combine on the same aircraft traffic originating in one Contracting Party's territory, traffic originating in the other Contracting Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with

respect to cargo charters in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Contracting Party that has designated the airline and in the inbound direction, the transportation to the territory of the Contracting Party that has designated the airline is a continuation of the transportation from beyond such point.

C. Each Contracting Party shall extend favorable consideration to applications by airlines of the other Contracting Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

A. Any airline designated by either Contracting Party performing international charter air transportation originating in the territory of the other Contracting Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Contracting Party. If a Contracting Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

B. However, nothing contained in the above paragraph shall limit the rights of either Contracting Party to require airlines designated under this Annex by either Contracting Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Contracting Party shall require an airline designated under this Annex by the other Contracting Party, in respect of the carriage of traffic from the territory of that other Contracting Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

ANNEX III

Computer Reservations Systems

1. The Contracting Parties recognise that computer reservations systems (CRS) operations are an important aspect of the ability of an airline to compete. Specifically, the Contracting Parties note that CRS operations are regulated at the date of this agreement:

- in Portugal under European Community Regulation 2299/89, 24 July 1989, as amended by European Community Regulation 3089/93, 29 October, 1993, and by European Community Regulation 323/99, 8 February, 1999; and

- in the United States, under 14 CFR 255.

2. The Contracting Parties agree that, consistent with the laws and regulations of the Contracting Parties in effect on the date that this Agreement is signed, the following principles shall be followed with respect to CRS operations in international aviation on a nondiscriminatory basis.

- a) CRS's shall have integrated primary displays for which:
 - (i) information regarding international air services, including the construction of connections on those services, shall be edited and displayed based on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity, and that apply uniformly to all participating airlines;
 - (ii) CRS data bases shall be as comprehensive as possible and CRS vendors shall not delete information from their data bases until it has been superseded;
 - (iii) CRS vendors shall not manipulate information given by participating airlines in a manner which would lead to the provision of inaccurate, misleading or discriminatory information; and the information provided by participating carriers shall be clear and accurate; for example flights where the code displayed is not that of the operating carrier (i.e. code-shares), flights involving a change of aircraft and flights with stops shall be clearly identified as having those characteristics;
 - (iv) All CRSs that are available to travel agents who directly distribute information about airline services to the travelling public in either Contracting Party's territory shall not only be obligated to, but shall also be entitled to, operate in conformance with the CRS rules that apply in the territory where the CRS is being operated.
- b) Travel agents shall be allowed to use any of the secondary displays available through the CRS for an individual transaction so long as the travel agent makes a request for that display to meet a specific request by a consumer.
- c) All airlines willing to pay any applicable non-discriminatory fee shall be permitted to participate in such vendor's CRS. All distribution facilities that a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. CRS vendors shall display, on a non-discriminatory, objective, carrier-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those services. Upon request, a CRS vendor shall disclose details of its data base update and storage procedures, its criteria for editing and ranking information, the weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.
- d) CRS vendors of one Contracting Party operating in the territory of the other Contracting Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies

and other subscribers whose principal business is the distribution of travel-related products in the territory of the other Contracting Party, if the CRS complies with these principles.

e) In the territory of one Contracting Party, CRS vendors of the other Contracting Party shall not be subject to more stringent or restrictive requirements, with respect to access to and use of communications facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on the first Contracting Party's own CRS vendors.

f) CRSs in use in the territory of one Contracting Party shall be entitled to effective and unimpaired access in the territory of the other Contracting Party provided that they comply with the standards and laws in force in that territory, which shall be non-discriminatory. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Contracting Party. Owners/operators of CRSs of one Contracting Party shall have the same opportunity to own/operate CRSs that conform to these principles within the territory of the other Contracting Party, as do owners/operators of that Contracting Party. Airlines and CRS vendors of one Contracting Party shall not discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Contracting Party.

ANNEX IV

Transitional Provisions

1. The following provisions shall expire on December 31, 2002, or such earlier date as is agreed upon by the Contracting Parties:

a) Charter services - country of origin rules: Notwithstanding the provisions of Annex II, designated airlines of each Contracting Party shall conduct charter operations in accordance with the laws, regulations and rules of the country of origin of the traffic.

2. The following provisions shall expire on December 31, 2003, or such earlier date as is agreed upon by the Contracting Parties:

a) Fifth-freedom rights to certain African countries for U.S. airlines: Notwithstanding the provisions of Annex I, section 1 (A)(1) and the provisions of Annex II, section 1 (A), the airlines of the United States shall not be permitted to exercise local traffic rights between a point or points in Portugal and any point or points in Angola, Cape Verde, Guinea-Bissau, Mozambique, or Sao Tome and Principe;

b) Seventh-freedom rights for all-cargo services for U.S. airlines: Notwithstanding the provisions of Annex I, section 1 (A)(2) and the provisions of Annex II, section 1 (A)(2), the airlines of the United States shall not be permitted to operate all-cargo service or services between Portugal and any point or points under

(i) Annex I, section 1 (A)(2); or

(ii) Annex II, section 1 (A)(2) where such service does not constitute part of a continuous operation, with or without a change of aircraft, that includes service to the United States for the purpose of carrying local traffic between the United States and the territory of Portugal; and

c) Seventh-freedom rights for all-cargo services for Portuguese airlines:

Notwithstanding the provisions of Annex I, section 1 (B)(2) and the provisions of Annex II, section 1 (A)(2), the airlines of the Portuguese Republic shall not be permitted to operate all-cargo service or services between the United States and any point or points under

(i) Annex I, section 1 (B)(2); or

(ii) Annex II, section 1 (A)(2) where such service does not constitute part of a continuous operation, with or without a change of aircraft, that includes service to Portugal for the purpose of carrying local traffic between Portugal and the territory of the United States.